

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

REPEAT PRECISION, LLC,

Plaintiff,

v.

DYNAENERGETICS EUROPE GMBH,
and DYNAENERGETICS US, INC.,

Defendants.

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Civil Action No. 6:21-cv-104

JURY TRIAL DEMANDED

**PLAINTIFF REPEAT PRECISION’S ORIGINAL
COMPLAINT FOR PATENT INFRINGEMENT**

Plaintiff Repeat Precision, LLC (“Repeat Precision”) files this complaint for patent infringement against Defendants DynaEnergetics Europe GmbH and DynaEnergetics US, Inc. (together, “DynaEnergetics”). Repeat Precision alleges infringement of United States Patent No. 9,810,035 B1 (the “’035 Patent”) as follows:

PARTIES

1. Repeat Precision is a Texas limited liability company with a principal place of business at 130 Northridge Road, Marble Falls, Texas 78654.

2. DynaEnergetics Europe GmbH is a corporation organized under the laws of Germany, with its headquarters at Kaiserstrasse 3, 53840 Troisdorf, Germany.

3. DynaEnergetics US, Inc. is a corporation organized under the laws of the State of Colorado, with its headquarters at 2050 W. Sam Houston Parkway S., Suite 1750, Houston, Texas 77042-3659, and a regular and established place of business at 3580 HCR 1145 Loop N., Blum, Texas 76627. DynaEnergetics US can be served with process by serving its registered agent, National Registered Agents, Inc., at 1999 Bryan Street, Suite 900, Dallas, Texas 75201.

JURISDICTION

4. This is an action for patent infringement arising under the patent laws of the United States, 35 U.S.C. §§ 1 *et seq.*, including 35 U.S.C. § 271. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

5. This Court has personal jurisdiction over DynaEnergetics because it actively and regularly conducts business within the State of Texas and the Western District of Texas (the “District”), including from its regular and established place of business within this District at 3580 HCR 1145 Loop N., Blum, Texas 76627. Moreover, DynaEnergetics, either directly or indirectly, has committed acts within the District giving rise to this action and/or has established minimum contacts with the District such that the exercise of jurisdiction would not offend traditional notions of fair play and substantial justice.

6. DynaEnergetics has committed acts of infringement of the ’035 Patent within the District by making, using, selling, and/or offering for sale in, and/or importing into, the District products protected by the ’035 Patent. DynaEnergetics has also placed, and is continuing to place, infringing products into the stream of commerce via an established distribution channel with the knowledge and/or understanding that they are sold in the State of Texas, including in this District.

7. On information and belief, DynaEnergetics has derived substantial revenues from its infringing acts in the District, including its manufacturing and/or sale of infringing products.

8. Additionally, DynaEnergetics is currently availing itself of this Court’s jurisdiction in other still-pending patent cases that DynaEnergetics filed in this District, including Case Nos. 6:20-cv-01110-ADA, 6:20-cv-01201-ADA, 6:21-cv-00084-ADA, and 6:21-cv-00085-ADA.

VENUE

9. Venue is proper against DynaEnergetics in this District under 28 U.S.C. § 1400(b) because it has committed acts of infringement and has a regular and established place of business

in the District. See *TC Heartland LLC v. Kraft Foods Grp. Brands LLC*, 137 S. Ct. 1514, 1521 (2017); *In re Cray Inc.*, 871 F.3d 1355, 1362–63 (Fed. Cir. 2017). In particular, on information and belief, DynaEnergetics maintains facilities at 3580 HCR 1145 Loop N., Blum, Texas 76627. The below photograph from a press release about DynaEnergetics’s Blum facilities depicts them:



DynaEnergetics Celebrates Grand Opening of DynaStage™ Manufacturing and Assembly Facilities in Blum, Texas, GlobeNewswire, <https://www.globenewswire.com/news-release/2018/11/16/1652928/0/en/DynaEnergetics-Celebrates-Grand-Opening-of-DynaStage-Manufacturing-and-Assembly-Facilities-in-Blum-Texas.html> (last visited Feb. 1, 2021).

10. Additionally, venue is proper in the District under 28 U.S.C. § 1391(b)(2) because, on information and belief, a substantial part of DynaEnergetics’s infringing activities giving rise to the claims herein occurred in the District and under 28 U.S.C. § 1391(c)(3) because DynaEnergetics Europe GmbH is not a United States resident.

UNITED STATES PATENT NO. 9,810,035 B1

11. On November 7, 2017, the United States Patent and Trademark Office (“PTO”) duly and legally issued United States Patent No. 9,810,035 B1, entitled “Disposable Setting Tool.” A true and correct copy of the ’035 Patent is attached as Exhibit A.

12. The ’035 Patent claims patent-eligible subject matter and is valid and enforceable.

13. Repeat Precision is the assignee of the '035 Patent by a written assignment effective as of December 10, 2020 and duly recorded with the PTO on December 15, 2020, and is the exclusive owner of all rights, title, and interest in and to the invention claimed in the '035 Patent and its underlying patent applications, including the right to sue for injunctive relief and the right to sue and recover for all past, present, and future damages for infringement of the '035 Patent.

14. At least as of the filing of this complaint, if not earlier, DynaEnergetics has been placed on notice of the '035 Patent.

FACTS

A. Repeat Precision's Technology

15. Repeat Precision was formed in 2017 to, among other things, manufacture and sell frac plugs. Frac plugs are used during the completion of oil and gas wells to isolate specific zones within the well, particularly when the operator is perforating various zones. It is common for there to be multiple completion zones within a well, with horizontal wells having many more zones than vertical wells. A frac plug is used to enable the operator to focus on a particular zone for completion without adversely impacting the work that has already been performed further down the well (*i.e.*, toward its “toe” or bottom hole location) by sealing off the lower sections.

16. Subsequent to its formation, Repeat Precision entered into the setting-tool business—manufacturing and selling the tools used to set frac plugs in the desired location within a well. To set the plug, it is attached to a setting tool before being inserted into the well. The bottom-hole assembly (*i.e.*, the setting tool and frac plug) usually includes additional equipment, such as a wireline adapter kit, perforation guns, and logging tools that are used to shoot holes into the well casing and surrounding structure to enable sand and water to be injected into the reservoir and hydrocarbons to subsequently flow into the well.

17. In particular, Repeat Precision sells setting tools often referred to as “disposable setting tools,” as compared to the alternative referred to as “conventional setting tools.” Conventional setting tools are large, heavy, and expensive tools made to be taken apart and used multiple times to set frac plugs. Each use requires complete disassembly, cleaning, and reassembly, wasting time and creating great room for error.

18. To address these inefficiencies and safety risks, Repeat Precision licensed and developed disposable setting tool technology. Repeat Precision’s setting tools perform the same function as conventional setting tools—*i.e.*, setting frac plugs in place to isolate zones in a well—but are shorter, lighter, and less expensive than conventional setting tools. Additionally, Repeat Precision’s setting tools are assembled in a factory, minimizing the risk of error because the tool does not need to be assembled, cleaned, and reassembled in the field. Eliminating this assembly process also saves significant labor costs.

19. This setting tool technology is currently protected by multiple United States patents, including the ’035 Patent, of which Repeat Precision is the assignee. Repeat Precision continues actively to invest in and develop this technology as a means to set downhole isolation devices, including its own frac plug.

20. Claim 1 of the ’035 Patent recites:

1. A gas operated setting tool for use in wells, comprising:

a mandrel having a first section, an intermediate section and a second section, said first section of being defined for securing to a firing head thereto, said intermediate section having an interior bore extending from said first section to a blind end of said interior bore and defining a power charge chamber, wherein one or more flow ports extend radially outward from said power charge chamber through said mandrel to an exterior of said intermediate section of said mandrel, said intermediate section defining an intermediate exterior of a first uniform circumference, and said second section having a lower exterior of a second uniform

circumference, wherein said lower exterior is in fluid communication with said interior bore;

a barrel piston having a tubular body with an enclosed end, said tubular body having a central portion with a uniform interior circumference for slidably receiving said intermediate section and said second section of said mandrel, with an annular-shaped space defined to extend between said central portion of said tubular body of said barrel piston and said second section of said mandrel, said enclosed end of said tubular body having a bore for slidably receiving said second section of said mandrel;

a first seal extending between said tubular body of said barrel piston and said intermediate section of said mandrel for sealing a first portion of said annular-shaped space;

a second seal extending between said bore in said enclosed end of said barrel piston and said second section of said mandrel for sealing a second portion of said annular-shaped space;

said mandrel further having an upper end with a seal section for securing to the firing head, and wherein said mandrel and said barrel piston have lowermost ends adapted for securing to respective ones of a setting sleeve and a packer mandrel; and

wherein a power charge is disposed in said power charge chamber and ignited to generate pressurized gas, pass said pressurized gas through said one or more ports and stroke said barrel piston over said second section of said mandrel, moving the setting sleeve relative to the packer mandrel and setting a well tool secured thereto.

Ex. A at 7:12–55.

B. DynaEnergetics

21. On information and belief, DynaEnergetics Europe GmbH was created in 2001 as a management buyout of the oilfield division of Dynamit Nobel AG. In 2007, DynaEnergetics Europe GmbH was acquired by DMC Global Inc. (then by a different name). DynaEnergetics Europe GmbH was comprised of two primary businesses: explosive metalworking and oilfield products. DMC Global grew the business over the next several years by acquiring additional related sales and manufacturing companies in Canada and the United States and purchasing minority interests in certain Russian joint ventures.

22. On information and belief, in 2014, DMC Global (still by a different name) re-branded all of its oilfield product segments as “DynaEnergetics,” including DynaEnergetics Europe GmbH and its sister company DynaEnergetics US, both of which are wholly owned subsidiaries of DMC Global. In 2016, DMC Global changed its name to its current name of DMC Global. In 2018, DynaEnergetics expanded its operations by adding 74,000 square feet of manufacturing, assembly, and administrative space to its Blum, Texas facilities.

23. Today, DynaEnergetics designs, manufactures, markets, and sells perforating systems and associated hardware for the global oil and gas industry. DynaEnergetics has long focused on providing perforating systems, including by designing, manufacturing, and selling all five primary perforating system components. Whereas traditionally, like conventional setting tools, perforating components have been assembled by personnel at the well site or a nearby assembly facility, in 2015, DynaEnergetics began assembling its perforating systems at its manufacturing facilities. DynaEnergetics sells these systems to oilfield service companies around the world, including in the State of Texas and in this District.

C. DynaEnergetics’s Infringing Product

24. On July 8, 2020, DynaEnergetics announced the addition of a disposable setting tool called the “DS MicroSet” to its “family of Factory-Assembled, Performance-Assured™ well-perforating products.” *DynaEnergetics Expands Portfolio of Well Perforating Solutions with Introduction of DS MicroSet™ Setting Tool and DS Liberator™ Ballistic Release Tool*, GlobeNewswire, <https://www.globenewswire.com/news-release/2020/07/08/2059086/0/en/Dyna-Energetics-Expands-Portfolio-of-Well-Perforating-Solutions-with-Introduction-of-DS-MicroSet-Setting-Tool-and-DS-Liberator-Ballistic-Release-Tool.html> (last visited Feb. 1, 2021).

25. DynaEnergetics described its DS MicroSet as a “fully assembled, quality assured and ready for deployment” “disposable setting tool:”

The patent-pending DS MicroSet is a compact, disposable setting tool used to install the plugs that isolate stages in a multi-stage, unconventional oil or gas well. Like all of DynaEnergetics' DS products, it is delivered directly to the customers' wellsite or staging location fully assembled, quality assured and ready for deployment. . . . The single-use tool is fully disposable, reducing time and labor associated with reclaiming and redressing standard setting tools.

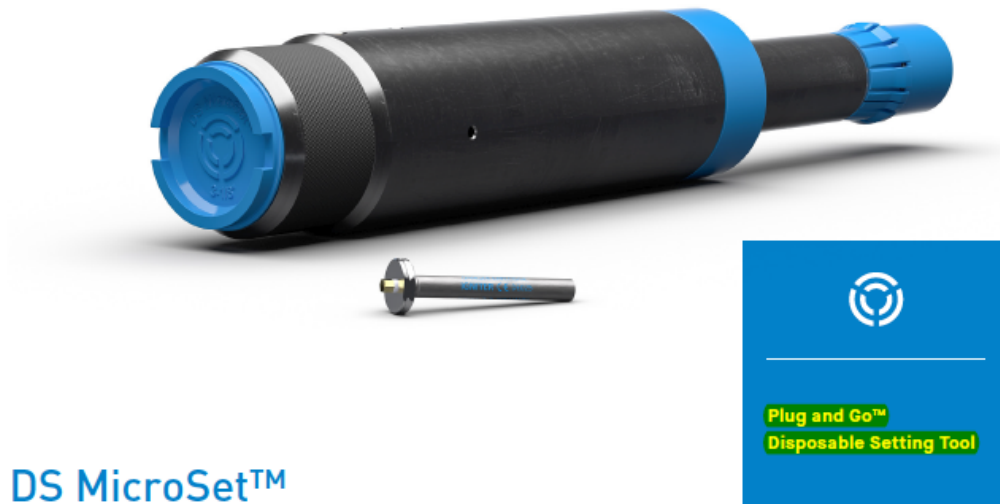
Id.

26. Shortly after the DS MicroSet's release, DynaEnergetics's outside counsel contacted Repeat Precision affiliate NCS Multistage Inc. ("NCS"). DynaEnergetics's counsel had a virtual meeting with a NCS employee on July 23, 2020, during which counsel referenced the DS MicroSet's release. In a July 27, 2020 email in response to a request by NCS for more information so that NCS could evaluate the tool in connection with NCS and Repeat Precision's intellectual property, DynaEnergetics's counsel stated that "engineering drawings are considered one of the most proprietary pieces of information that [DynaEnergetics] has" and offered instead "a few patent applications on the related matter" that DynaEnergetics had filed. In a later August 12, 2020 email, DynaEnergetics's counsel represented that, after consulting "in detail" with DynaEnergetics's in-house counsel, they believed that NCS and Repeat Precision could analyze the DS MicroSet "by reviewing the most recent specification and drawings [DynaEnergetics] filed in the application."

27. On August 21, 2020, the parties entered into a now-expired confidentiality agreement "with respect to discussions regarding evaluation of Dyna's MICROSET™ Setting Tool as contemplated by the unpublished patent pending – U.S. Patent Application No. 16/924,504 entitled SINGLE USE SETTING TOOL FOR ACTUATING A TOOL IN A WELLBORE . . . – and intellectual property rights held by NCS" ("CDA"). Under the CDA, DynaEnergetics shared this patent application with NCS before its publication. A true and correct copy of the CDA is attached as Exhibit B.

28. That patent application, filed with the PTO on July 9, 2020 by DynaEnergetics Europe GmbH, was published on November 19, 2020 as Publication No. US 2020/0362654 A1 (the “’654 Application”). A true and correct copy of the ’654 Application is attached as Exhibit C.

29. The DS MicroSet is a gas-operated setting tool for use in wells. In a product sheet released by DynaEnergetics, the DS MicroSet is referred to as a “Plug and Go™ Disposable Setting Tool” that “functions based on pressure generated from gas combustion:”



DS MicroSet™ - DynaEnergetics, DynaEnergetics, https://dynaenergetics.com/-/media/Project/DMC/DynaEnergetics/Resource-Files/DS-Microset_DS-Liberator_Product-Sheets.pdf (last visited Feb. 1, 2021) (emphasis added).

EASY ASSEMBLY

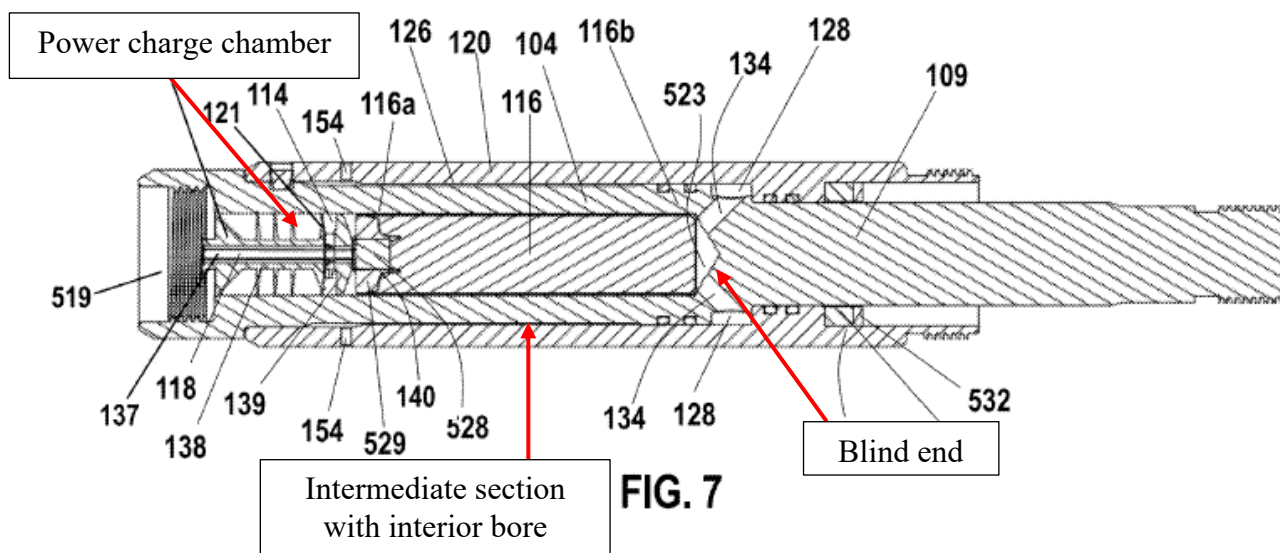
DS MicroSet arrives at the wellsite fully assembled, and directly attaches to the string of DynaStage™ (DS) perforating systems. Wellsite preparation is easy and foolproof; only requiring insertion of the Intrinsically Safe™ IS2™ IG Plug and Go igniter before being attached to the gun string, tested and run downhole.

DS MicroSet can be tested before deployment with the Infinity Surface Tester. Once the tool string is deployed and has reached the desired depth in the well bore, the power charge in the DS MicroSet is initiated from surface with the Infinity Firing Panel, starting the setting sequence.

Because DS MicroSet functions based on pressure generated from gas combustion, no hydraulic oil is required. This further improves reliability and reduces the risk of human error.

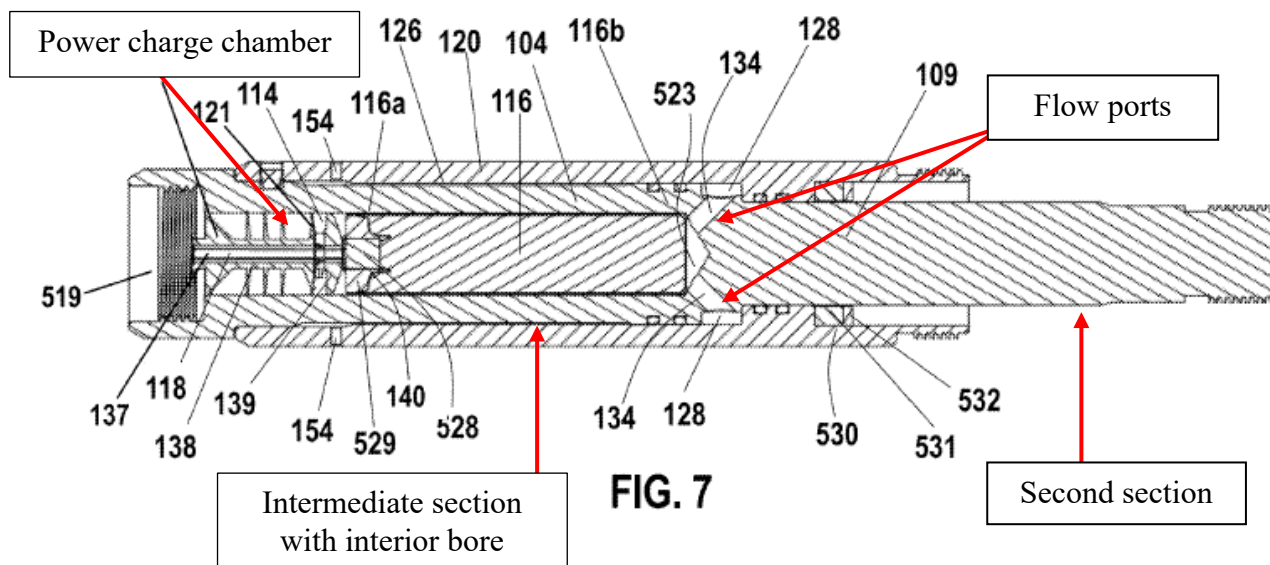
Id. (emphasis added).

32. The intermediate section has an interior bore extending from the first section to a blind end, which defines the power charge chamber:



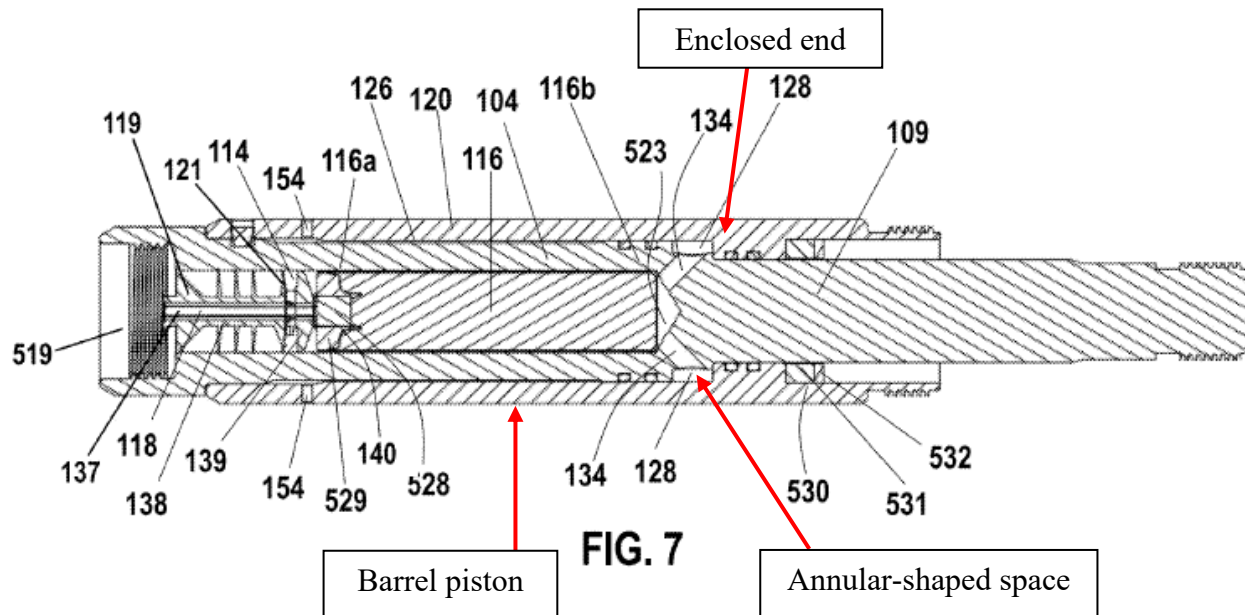
Id. (annotations added).

33. The DS MicroSet comprises a mandrel with one or more flow ports that extend radially outward from the power charge chamber through the mandrel to an exterior of its intermediate section, which defines an intermediate exterior of a first uniform circumference, and a second section having a lower exterior, which is of a second uniform circumference and in fluid communication with the interior bore:



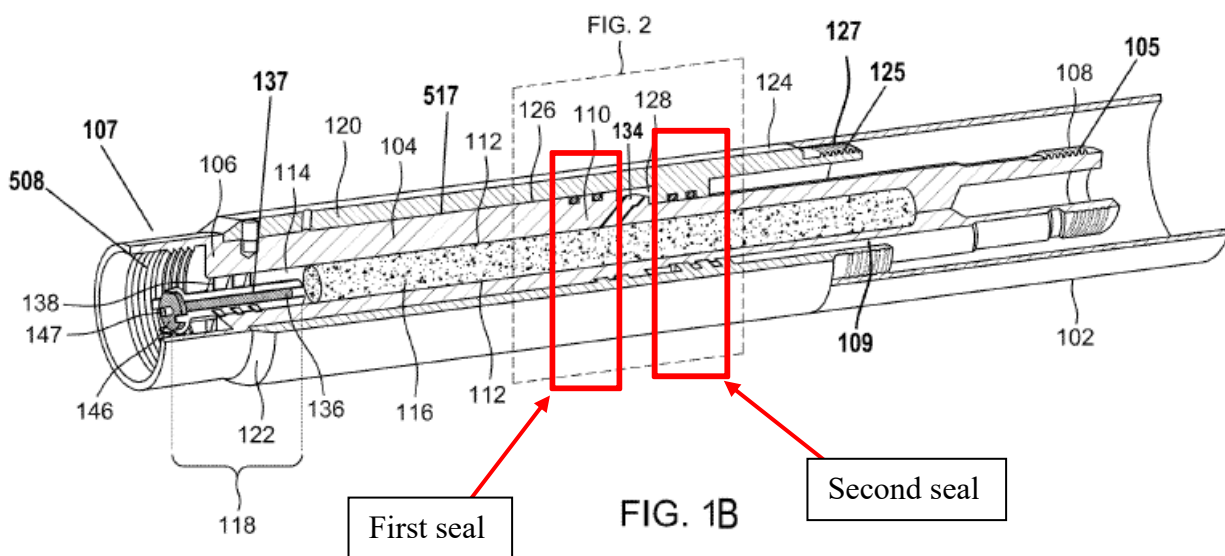
Id. (annotations added).

34. The DS MicroSet further comprises a barrel piston having a tubular body with an enclosed end and a central portion with a uniform interior circumference for slidably receiving the intermediate and second sections of the mandrel, with an annular-shaped space defined to extend between the tubular body's central portion and the mandrel's second section, and with an enclosed end having a bore for slidably receiving the mandrel's second section:



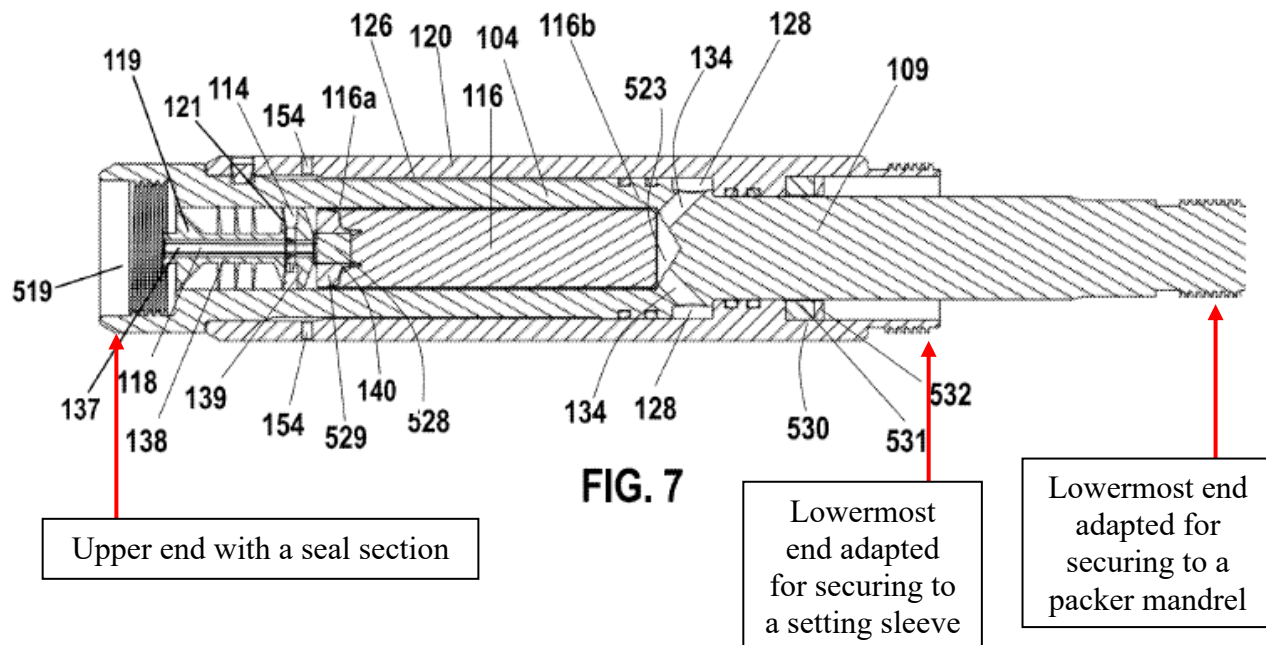
Id. (annotations added).

35. The DS MicroSet also includes a first seal, extending between the barrel piston's tubular body and the mandrel's intermediate section for sealing a first portion of the barrel piston's annular-shaped space, and a second seal, extending between the enclosed end of the barrel piston's bore and the mandrel's second section for sealing a second portion of the annular-shaped space:



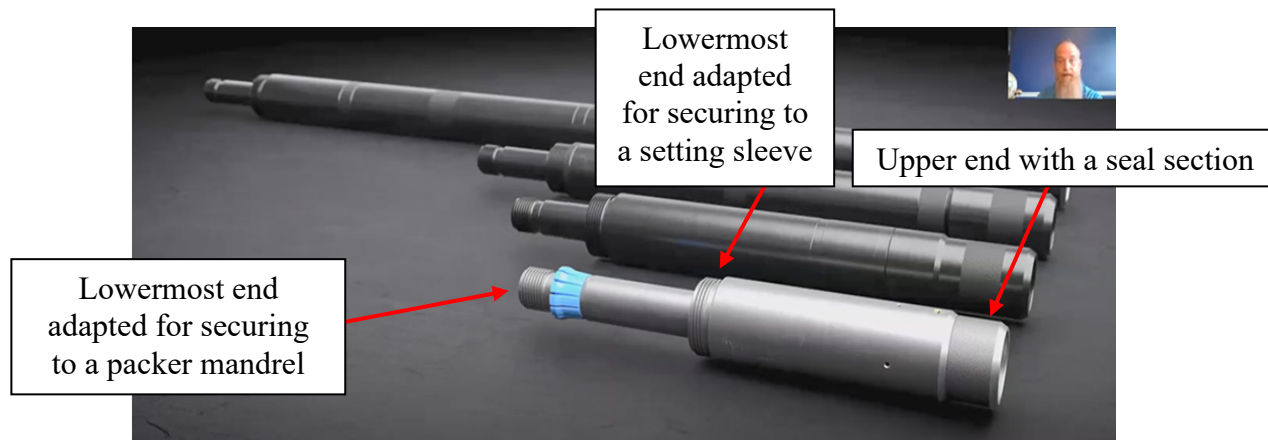
Id. (annotations added).

36. The DS MicroSet's mandrel, either literally or equivalently, has an upper end with a seal section for securing to a firing head, and both the mandrel and the barrel piston have lowermost ends adapted for securing to the respective ends of a setting sleeve and a packer mandrel:



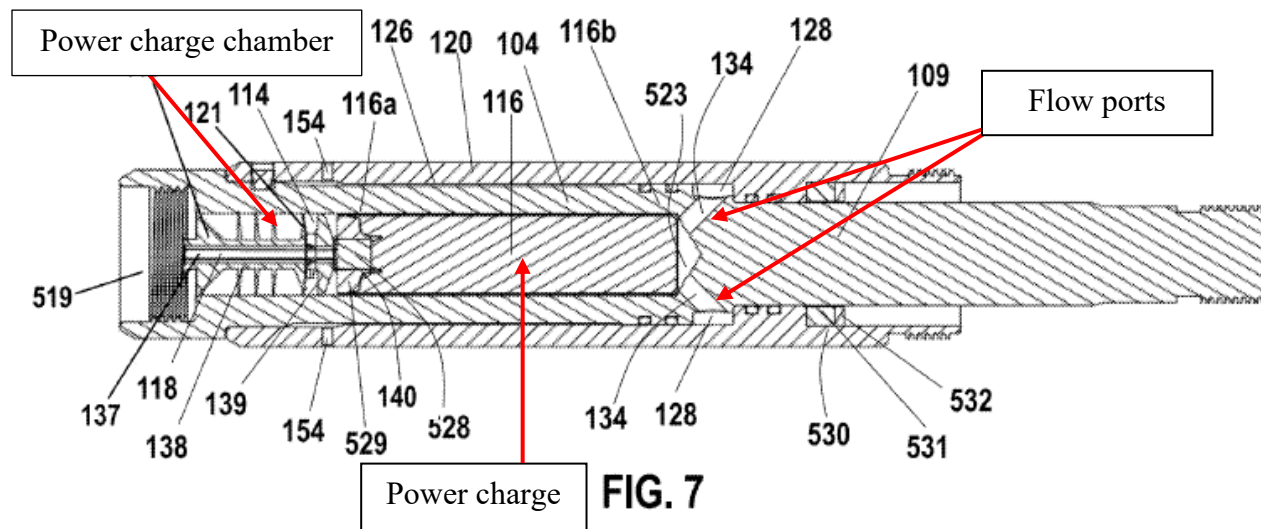
Id. (annotations added).

37. On September 24, 2020, DynaEnergetics released a video on its YouTube channel that describes the DS MicroSet, compares it to conventional setting tools, and shows each of these ends of the DS MicroSet's mandrel and barrel piston:



New Technology DS Microset and DS Liberator, YouTube, <https://www.youtube.com/watch?v=IDII2nO-kNM&feature=youtu.be> (last visited Feb. 1, 2021).

38. Lastly, the DS MicroSet comprises a power charge that is disposed in the power charge chamber and ignited to generate pressurized gas, pass said gas through one or more ports, and stroke the barrel piston over the mandrel's second section, moving the setting sleeve relative to the packer mandrel and setting a well tool that is secured thereto:



Ex. C (annotations added).

COUNT 1

(DynaEnergetics's infringement of the '035 Patent)

39. Repeat Precision repeats and incorporates by reference each preceding paragraph as if fully set forth herein and further states:

40. On November 7, 2017, the PTO duly and legally issued the '035 Patent, entitled "Disposable Setting Tool."

41. Repeat Precision is the owner by assignment of the '035 Patent and holds all substantial rights in it, including the sole and exclusive right to sue and recover for infringement.

42. On information and belief, DynaEnergetics has manufactured, distributed, sold, and/or offered to sell the DS MicroSet, including from its facilities in Blum, Texas.

43. As described above, the DS MicroSet satisfies all claim limitations of one or more of the claims of the '035 Patent, including at least claim 1. DynaEnergetics, a Repeat Precision competitor, has directly infringed and continues to directly infringe one or more claims, including at least claim 1, of the '035 Patent, either literally or through the doctrine of equivalents, by making, using, importing, supplying, distributing, selling, and/or offering for sale the DS MicroSet within the United States, in violation of 35 U.S.C. § 271(a).

44. On information and belief, DynaEnergetics has made and is continuing to make unlawful gains and profits from its infringement of the '035 Patent.

45. DynaEnergetics likewise has induced infringement of the '035 Patent in violation of 35 U.S.C. § 271(b). DynaEnergetics actively encourages its customers, by and through its sales and marketing efforts and staff, to directly infringe the '035 Patent by using the DS MicroSet.

46. DynaEnergetics's sales personnel and technical marketing staff interface with its customers and potential customers to purchase and use the DS MicroSet that infringes the '035 Patent. DynaEnergetics's sales personnel and technical marketing staff tout the technological and

economic benefits of the DS MicroSet and actively encourage use of the DS MicroSet in customers' wells. DynaEnergetics has known that their customers' acts constituted direct infringement of at least one claim of the '035 Patent since at least the date of service of this complaint. As a result of DynaEnergetics's active encouragement and intentional inducement, its customers have committed acts directly infringing the '035 Patent.

47. In addition to the foregoing and/or in the alternative, DynaEnergetics is liable as a contributory infringer of the '035 Patent under 35 U.S.C. § 271(c). DynaEnergetics has offered to sell and/or sold the DS MicroSet within the United States.

48. For example, the DS MicroSet was offered for sale, sold, and/or marketed by and through DynaEnergetics's sales personnel and technical marketing efforts and staff on its website, including with a link to a detailed product sheet, as shown in the below screenshot:



DynaEnergetics, <https://www.dynaenergetics.com/> (last visited Feb. 1, 2021); *DS MicroSet™ - DynaEnergetics*, DynaEnergetics, https://dynaenergetics.com/-/media/Project/DMC/DynaEnergetics/Resource-Files/DS-Microset_DS-Liberator_Product-Sheets.pdf (last visited Feb. 1, 2021).

49. Such efforts resulted in the infringing product being used. On information and belief, DynaEnergetics's customers do not manufacture the DS MicroSet on their own, but contract with

DynaEnergetics to purchase it. DynaEnergetics has known the DS MicroSet to be infringing the '035 Patent since at least the date of service of this complaint. The DS MicroSet is not a staple article or a commodity of commerce suitable for substantial noninfringing use because it cannot be used without infringing the '035 Patent. Thus, DynaEnergetics is liable as a contributory infringer.

50. DynaEnergetics's infringement has damaged Repeat Precision, which is entitled to recover from DynaEnergetics the damages it has sustained as a result of DynaEnergetics's wrongful acts in an amount subject to proof at trial but in no event less than a reasonable royalty for the use made of the invention by DynaEnergetics, together with interests and costs as fixed by the Court.

PRAYER FOR RELIEF

WHEREFORE, Repeat Precision prays for judgment against DynaEnergetics as follows:

51. that the Court declare DynaEnergetics to have infringed, either directly or indirectly, one or more claims of the '035 Patent;

52. that the Court issue a permanent injunction pursuant to 35 U.S.C. § 283 against the continuing infringement of the claims of the '035 Patent by DynaEnergetics, its officers, agents, employees, attorneys, representatives, and all others acting in concert therewith;

53. that the Court order an accounting for all monies received by or on behalf of DynaEnergetics and all damages sustained by Repeat Precision as a result of its aforementioned infringements, that such monies and damages be awarded to Repeat Precision, and that interest and costs be assessed against DynaEnergetics pursuant to 35 U.S.C. §§ 154(d) and 284;

54. that the Court declare this an exceptional case and order DynaEnergetics to pay Repeat Precision its reasonable attorneys' fees and costs, pursuant to 35 U.S.C. § 285; and

55. that the Court award such further and other relief to Repeat Precision as the Court deems just, together with its costs and disbursements in this action.

DEMAND FOR JURY TRIAL

56. Pursuant to Federal Rule of Civil Procedure 38(b), Repeat Precision respectfully requests a trial by jury on all issues so triable.

Dated: February 1, 2021

Respectfully submitted,

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